

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.2.2007

Coram:

The Honourable Mrs. Justice PRABHA SRIDEVAN

W.P.No.47659 of 2006 and
M.P. No.1 of 2006

S. Girija
Proprietrix,
M/s. Dinesh Babu Transport,
Room No.19, 3rd floor,
Kumbhat Commercial Complex,
699-700, Periyar E.V.R. High Road,
Aminjikarai,
Chendnai.29. ... Petitioner

vs.

General Manager,
Food Corporation of India,
No.124, Greems Road,
Chennai.6. ... Respondent

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus forbearing the respondent from allotting the tender pertaining to the handling and Transport Contract work at the Food Corporation of India Godown at FSD Salem, and rail head at Salem Junction and vise versa, in Tender No. S & C/13/5/1/2006/Adhoc/Cont, dated 3.10.2006, duly issued by the respondent, The General Manager, Food Corporation of India, No.124 Greems Road, Chennai-600 006 other than the petitioner.

For Petitioner : Mr. N.R.Chandran
Sr. counsel
for Mr. D. Ashok Kumar

For Respondent : Mr.R. Muthukumaraswamy
Sr. Counsel

for Mr. P.P. Adhi Kesavalu

O R D E R

By consent, the main writ petition itself is taken up for disposal.

2. The petitioner is the proprietrix of a company known as M/s.Dinesh Babu Transport Corporation. The petitioner is engaged in transportation business for several years. The petitioner has also dealt with various statutory corporations viz., Central Warehousing Corporation and Tamil Nadu Civil Supplies Corporation. The petitioner claims that she has satisfactorily discharged the contract entrusted to her by the Corporations mentioned above. On 3.10.2006, tenders were called for by the respondent corporation for handling the contract work at the rail head at Salem Junction. The last date for receipt of tenders was 3.00 p.m. on 19.10.2006. The petitioner participated in the tender and when the tenders were opened on 19.10.2006 for finalising the persons who came out successfully at the stage of technical bid, the petitioner found that she had not been included and six other persons had been found qualified at the technical bid stage. The petitioner has alleged that without even finalising the technical bid, the respondent had opened the price bid, which is highly

irregular. It is alleged that the respondent has opened the price bid only to accommodate their nominee and there is lack of transparency. The petitioner has referred to an earlier occasion when according to the petitioner, the respondent had not conducted the tender in accordance with law. According to the petitioner, non consideration of her bid is contrary to law and the petitioner has produced all the necessary documents to show that she qualifies for the same. This in short are the contents of the affidavit filed in support of the writ petition.

3. Counter has been filed on behalf of the respondent where all these allegations are denied. It is specifically stated that the four member departmental committee, on a scrutiny of the technical bid, called for certain documents to examine the financial stability and found from the records produced by the petitioner that the financial stability of the petitioner was not satisfactory and accordingly, it was adjudged as non acceptable. The respondent has also stated that there are series of doubts about the petitioner's bonafides since for the same financial year, the petitioner has represented herself on the one hand as proprietrix of Dinesh Babu Transport and also as the partner of the firm M/s.Dinesh Babu Transport. The respondent has denied all the allegations regarding malafides and lack of transparency . According to the

respondent, the petitioner does not have any vested right for award of the contract and when the respondent has considered all the documents and finalised the technical bid, it is not open to the petitioner to insist upon her bid being considered.

4. The learned senior counsel appearing for the petitioner submitted at the outset that though the prayer in the writ petition is for a mandamus restraining the respondent from allotting the tender pertaining to the aforesaid contract to any one other than the petitioner, that the petitioner would be satisfied if her technical bid was accepted and the price bid is considered along with the other tenders. Learned senior counsel also submitted that when other corporations like the Central Warehousing Corporation and Tamil Nadu Civil Supplies Corporation with identical tender conditions have awarded tenders to the petitioner, it is surprising that the respondent has rejected the petitioner's technical bid as not acceptable. According to the learned senior counsel, this decision does not pass the test of reasonableness. The learned senior counsel also submitted that the petitioner has a fleet of lorries and has financial stability without any doubt. The petitioner has also produced certificates to show her financial stability. The petitioner has applied for the tender as the proprietrix of Dinesh Babu Transport and it was specifically stated that the firm had been dissolved on

the retirement of the other partners. The learned senior counsel also submitted that the bank statement would show that at any given point of time, the capacity of the petitioner to transact huge amounts is evident. Learned senior counsel submitted that merely on the basis of the income tax return, the petitioner's financial stability should not be decided, ignoring the certificates given by the Bank which can certify the financial stability of the petitioner. The learned senior counsel also pointed out annexe I to the tender document, which reads as follows:-

"The names of the Bank or Banks and the branch with which the tenderers are dealing and who can certify the tenderer's financial status should be given".

5. The learned senior counsel also submitted that when the bank has certified that the financial status of the petitioner is satisfactory, it is surprising that the respondent should reject the technical bid of the petitioner. The learned senior counsel also submitted that the petitioner has given details of all the immovable properties and other properties which are in her hands, which should satisfy that the petitioner is financially stable.

6. On the other hand, the learned senior counsel appearing for the respondent pointed out that the income tax return of the petitioner for three assessment years viz., 2004-05, 2005-06 and 2006-07 were scrutinised which showed that the petitioner's financial status was not satisfactory. It was also submitted that contemporaneously, the petitioner has filed her returns both as proprietrix of Dinesh Babu transport and also as partner of the firm Dinesh Babu transport and therefore, the contention that the firm had been dissolved and the business of handling the goods is now carried on only by the proprietary concern cannot be accepted. The learned senior counsel submitted that the income tax returns and balance sheets, copies of which are enclosed in the typed set of papers, would indicate that there were sufficient materials to show that the financial status of the petitioner was not satisfactory and therefore, it is not for this Court to go into further investigation as to whether the petitioner was financially stable.

7. The learned senior counsel for the respondent also submitted that the fact that other statutory corporations have awarded similar contracts to the petitioner is hardly relevant for deciding this issue, since the quantum of work, the documents that are required and the reasons as to why the contract was awarded may be totally different in each case and therefore, it is not

possible to go into that question. The terms and conditions of the tender have been enclosed in the typed set of papers. It is a time bound contract; the conditions require that successful tenderers should bear the demurrage costs and if the person does not have the financial status to pay the huge costs, then, the respondent corporation will be saddled with the liability and therefore, the respondent should satisfy itself with regard to the financial stability of the tenderers. The learned senior counsel for the respondent also submitted that for the period 2005 - 2007, the tender was awarded to a person, who abandoned the work half way. Therefore, the present tender was called only for the remaining period. It was submitted that the decision of the respondent cannot be interfered with.

8. There are two bids viz., technical bids and price bids. The technical bids as per clause 7 (g) shall be opened first. The price bid of these tenderers would be opened if the technical bid is accepted. Therefore, unless the tenderers' technical bids are satisfactory, the request for opening the price bids cannot be considered. The respondent required the petitioner to prove her financial status for which several documents have to be submitted by her, including (i) letter from the bank and credit limits enjoyed; (ii) bank statement for the last six months from the bankers; (iii) latest solvency certificates from the

Tahsildar and bank; (iv) latest income tax clearance certificate; (v) duly audited profit and loss account for the preceding 3 years; and (vi) duly audited balance sheet for the preceding 3 years. It is no doubt true that the petitioner was asked to produce the names of the banks, which can certify the financial status of the petitioner.

But the Bank certificates are not the only documents upon which the respondent would decide the financial health of the tenderers. The other documents mentioned above are also relevant.

9. The tenderers shall also submit statements as to whether the tenderer is a Hindu joint Family Business, Proprietary concern, Registered partnership firm or a Limited Company. In the event that the tenderer is a Proprietary concern or a firm or a limited company or a Hindu Joint Family, the date of birth of the proprietor, partner, Director or the Kartha as the case may be, should be given. There should also be a certification that there are no undisclosed partners. Therefore, it is clear that the tenderers were required to be totally transparent with regard to their status.

10. The copies of the income tax returns of the individual viz., the petitioner as well as the firm Dinesh Babu Transport has been enclosed in the typed set of papers

filed by the respondent. The solvency certificate has been given by the Tahsildar certifying that the petitioner is solvent to the extent of Rs.5 lakhs. Another solvency certificate has been given by the Karnataka Bank to the effect that the firm Dinesh Babu Transport is good upto a sum of Rs.2,00,000/-.

11. It must be remembered that it is the case of the petitioner that it is the individual that had applied for the tender and not the firm. For the assessment year 2004-05, the individual , whose PAN is AAYPS8528 H, has declared an income from her business or profession of Rs.6356/-; for the assessment year 2005-06, the income from the business or profession is shown as Rs.11,211/-; and for the assessment year 2006-07, the individual has sustained a loss of Rs.4,18,895/-. Now as regards the firm, whose PAN is AADFD-0334-P, for the assessment year 2005-06, the income from the business is shown as Rs. 3621/- and for the assessment year 2006-07, the income from the business or profession is shown as Rs.5126/-. Now, according to the petitioner, it is only the individual who has applied for the tender. But the PAN Number mentioned in the tender schedule is the firm's PAN Number. The respondent's allegation that it is not clear whether the individual has applied or the firm, cannot be rejected.

12. If the committee which scrutinise the technical bids came to the conclusion from these materials that the petitioner did not have the financial status required for the grant of the tender, it does not appear to be unreasonable. In matters like this, the scope of interference of Court is very limited. Unless the decision is arbitrary or shocking or perverse and if it cannot pass the test of reasonableness, the Courts will not interfere with the right of the respondent Corporation to decide which technical bids should be accepted.

13. In TATA CELLULAR - Vs. - UNION OF INDIA

(1994 (6) S.C.C. 651), it was held,

" The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2)The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) the terms of the invitation to tender

cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) the Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

and again in ASSOCIATION OF REGISTRATION PLATES - Vs. - UNION OF INDIA AND OTHERS (2005) 1, S.C.C. 679), it was

held:-

"Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work. Article 14 of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim a fundamental right to carry on business with the Government. All that he can claim is that in competing for the contract, he should not be unfairly treated and discriminated, to the detriment of public interest. Undisputedly, the legal position which has been firmly established from various decisions of this Court, cited at the Bar (supra) is that Government contracts are highly valuable assets and the court should be prepared to enforce standards of fairness on the Government in its dealings with tenderers and contractors".

14. The respondent has a committee which presumably has experts comprising of four members to decide the same. From the materials before the committee, they decided not to accept the technical bid of the petitioner. It was contended on behalf of the petitioner that the petitioner

owns movable and immovable properties which will speak of her financial stability. We cannot go into that issue considering the scope of Article 226 of the Constitution of India. We can only deal with the issue on the basis of the records that were placed before the respondent and whether on the basis of those materials, the respondent was justified in arriving at the decision.

15. Considering the matter from this perspective, we cannot interfere with the decision of the respondent. The application of the petitioner appears to have been made in her individual capacity, though in the name of Proprietor, and the PAN of the firm alone is given. If the respondent had entertained doubts that the petitioner had represented herself " as a sole proprietary concern for certain purpose and as a partnership firm for certain other purposes", we also cannot have quarrel with the same.

16. In these circumstances, the writ petitioner is not entitled to any discretionary relief and hence, the writ petition is dismissed. Consequently, M.P.No. 1 of 2006 is also dismissed. No costs.

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To

General Manager,
Food Corporation of India,
No.124, Greems Road,
Chennai.6.